IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17745 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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UDESINH SHIVABHAI CHAUHAN

Versus

ARDESARJI HORAMASJI PARSI

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Appearance:

1. Special Civil Application No. 17745 of 2003

M/S.VYAS ASSOCIATES for Petitioner No. 1-3

UNSERVED-EXPIRED (N) for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3-7,8

MR BP TANNA, SR. ADVOCATE FOR TANNA ASSOCIATES for Respondent No. 8

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 03/08/2004

ORAL JUDGEMENT

Rule. Shri Bhaskar P Tanna, Learned Senior Counsel waives service of rule on behalf of the respondent no.8.

2. In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Gujarat Revenue Tribunal dated 18.7.2003 passed in Revision Application No.TEN/DA/158/97 in recalling its earlier order dated 2.7.2003 by which the Revision Application No.TEN/DA/158 of 1997 was ordered to be taken on file for final hearing. The petitioners have also challenged the legality and validity of the order passed by the Gujarat Revenue Tribunal dated 14.11.2003 passed in Restoration Application No.DA/8/2003 by which the Gujarat Revenue Tribunal has passed an order of abetting the Restoration Application No.DA/8/2003.

Proceedings were initiated by the Mamlatdar and ALT, Vadodara at the instance of the petitioners being Ganot Case No.64 of 1994. The Mamlatdar & ALT, Vadodara passed an order on 4.4.1996. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, Vadodara dated 4.4.1996, the petitioners preferred appeal before the Deputy Collector, Vadodara being Tenancy Appeal No.36 of 1996. The Deputy Collector, Vadodara by judgment and order dated 11.2.1997 dismissed the said appeal. Being aggrieved and dissatisfied with the same, the petitioners had preferred Revision Application before the Gujarat Revenue Tribunal (hereinafter referred to as the "Tribunal") being Revision Application No.TEN/DA/158/1997. It is the case of the petitioners that some fictitious persons approached the Tribunal in the year 1999 and behind the back of the petitioners, the aforesaid revision application was withdrawn and the petitioners were not even aware of the same. That as soon as they came to know about the withdrawal of the revision application behind their back and without their consent, the petitioners preferred an application for restoration on 1.4.2003 and after hearing the parties and learned advocates, the Tribunal passed an order on 2.7.2003 restoring the aforesaid Revision Application and the said application came to be allowed and the Revision Application No.158 of 1987 was ordered to be taken on file for final hearing.

It seems that one Advocate appeared from Vadodara and submitted an application and filed his objections with a request that he is an essential party in the application, that he has filed a caveat in the Tribunal

in the matter and that the matter went upto the Supreme Court in which Bai Zaverben, mother of the petitioner no.1 lost the legal battle and thereafter, they have purchased the property. It is the case of the petitioners that without giving any opportunity of being heard to the petitioners, by order dated 18.7.2003, the Tribunal passed an order cancelling the earlier order dated 2.7.2003 and the Tribunal issued fresh notices to all the parties including power of attorney and Advocate Shri B.J.Patel. It seems that during the pendency of the Restoration Application No.DA/8 of 2003, one Swaraj Narbheshanker Paneri moved an application for joining him as party to the aforesaid proceedings and has submitted the objections. Similarly, one Chandrikaben Chimanlal Patel, daughter of Kalavatiben and Chimanlal Patel also moved an application for allowing her to be joined as party to the aforesaid proceedings. It seems that the third party Swaraj Nebhashanker Paneri moved an application on 13.11.2003 for abetment of the revision application as the original respondent no.2 Kalavatiben, widow of Chimanlal Patel has died in the year 1990 and her heirs were not brought on record. That the Tribunal considering the provisions of Rule 25 of the Bombay Revenue Tribunal Regulations, 1958 passed an order of abetting the entire restoration application against all the respondents as the heirs and legal representatives of deceased Kalavatiben Chimanlal Patel were not brought on record and that Kalavatiben Chimanlal Patel was as a respondent no.2 in her individual capacity.

3. Being aggrieved and dissatisfied with the order dated 18.7.2003 in recalling the earlier order dated 2.7.2003 in restoring the Revision Application No.TEN/BA/158 of 1997 and also being aggrieved and dissatisfied with the order passed by the Tribunal dated 14.11.2003 in abetting the restoration application No.DA/8/2003, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

4. In the present Special Civil Application, the petitioners have also moved separate application. During the pendency of the present Special Civil Application, as the petitioners came to know that even the original respondent no.1 - Ardesarji Horamasji Parsi has also died in 1991, a separate application is also made for bringing the heirs of deceased Ardesarji Horamasji Parsi on record of the present Special Civil Application. There are two applications filed by the petitioners in the present Special Civil Application, one for bringing the heirs and legal representatives of deceased Kalavatiben - widow of

Chimanlal Nanalal Patel and another to bring the legal heirs and representatives of Ardesarji Horamasji Parsi on the record of the present Special Civil Application.

5. Shri D.D.Vyas, Learned Senior Advocate appearing on behalf of the petitioners have vehemently submitted that the Tribunal has misinterpreted Regulation 25. He has submitted that the Tribunal has committed an error in passing abetment of the restoration application qua all the respondents. He has further submitted that even considering Regulation 25, the Tribunal could have passed an order of abetment of restoration only qua the deceased in the present case - respondent no.2 Kalavatiben, widow of Chimanlal Nanalal Patel and he has submitted that considering the provisions of Regulation 25, the restoration application qua the other respondents would survive.

6. On the other hand, Shri B.P.Tanna, Learned Senior Advocate appearing for the respondents has submitted that even the respondent no.1 Ardesarji Horamasji Parsi has also died in the year 1991 and therefore, even the restoration application qua him is also abetted and no steps are taken by the petitioner to even bring the heirs and legal representatives of Ardesarji Horamasji Parsi on record. He has further submitted that this restoration application qua the original opponent no.1 i.e. Ardesarji Horamasji Parsi and original opponent no.2 Kalavatiben widow of Chimanlal Nanalal Patel is abetted and appropriate remedy for the petitioners would be to approach the Tribunal if permissible under the law for setting aside the order of abetment.

7. Shri D.D.Vyas, Learned Senior Counsel appearing for the petitioners states that the petitioners would like to approach the Tribunal by way of separate applications for quashing and setting aside the abetment of restoration application and also bringing the heirs and legal representatives of deceased Kalavatiben, widow of Chimanlal Nanalal Patel and also that of the deceased of Ardesarji Hormasji Parsi. As and when such applications are made, the Tribunal may consider the same in accordance with law and on merits. It will be open for both the parties to raise all the contentions available to them under the law. This Court has not expressed any opinion on merits of the case with regard to abetment and/or setting aside the abetment.

8. So far as the order passed by the Tribunal dated 14.11.2003 in so far as it relates to passing an order of abetment of restoration application qua other respondents

are concerned, the same is contrary to Regulation 25 of the Bombay Revenue Tribunal Regulations, 1958. Even as per Regulation No.25, if a respondent or opponent dies while the appeal or application is pending and no application is made for bringing the legal representatives of deceased on record within 90 days from the date on which the respondent or opponent dies then the appeal or application shall abet as regards the deceased and if the deceased be the sole respondent or opponent, the appeal or application shall be dismissed. Otherwise, it shall be proceeded with as regards the remaining respondents or opponents. Thus, the order passed by the Tribunal dated 14.11.2003 to abet the restoration application against the other opponents i.e. other than deceased Ardesarji Horamasji Parsi and deceased Kalavatiben, widow of Chimanlal Nanalal Patel is contrary to Regulation no.25 and cannot stand. Accordingly, the order passed by the Gujarat Revenue Tribunal dated 14.11.2003 passed in Restoration Application No.DA/8/2003 in so far as it relates to abetting the said restoration application qua original opponent nos.3 to 7 i.e. Jagdish Chimanlal Patel and others requires to be quashed and set aside and is hereby quashed and set aside. The restoration application qua the original opponent nos.3 to 7 are not abetted and are abetted only qua the original respondent no.1 and 2 Ardesarji Hormasji Parsi and Kalavatiben, widow of Chimanlal Nanalal Patel. As stated hereinabove, as the petitioners propose to make an appropriate application before the Tribunal for setting aside the abetment qua the original opponent no.1 and 2, it will be open for the petitioners to move an application for setting aside the abetment and as and when such applications are made, the same shall be decided by the Tribunal in accordance with law and on merits and it will be open for either parties to take all the contentions which are available to them under the law inclusive of the contentions on behalf of the respondents that the applications are not maintainable and cannot be entertained after so many years and any other contentions available to them under the Law. In the present Special Civil Application, the order dated 18.7.2003 passed by the Tribunal is also challenged but in view of the fact that the order is already passed by the Gujarat Revenue Tribunal on 14.11.2003 in abetting Restoration Application No.DA/8 of 2003 and the petitioners propose to submit an application for setting aside the abetment, the same is not considered by this Court. This Court has not gone into the legality and validity of the order passed by the Tribunal dated 18.7.2003 in the present Special Civil Application. For the reasons stated above, the order

passed by the Gujarat Revenue Tribunal dated 14.11.2003 is modified to the extent as stated hereinabove and it is held that the restoration application qua the original opponents nos.3 to 7 are not abetted. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)
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